REMARKS/ARGUMENTS

Reconsideration of the present application, as amended, is respectfully requested.

The December 30, 2003 Office Action and the Examiner's comments have been carefully considered. In response, the specification and claims are amended, and remarks are set forth below in a sincere effort to place the present application in form for allowance. The amendments are supported by the application as originally filed. Therefore, no new matter is added.

PRIORITY DOCUMENT

It is respectfully requested that in the next Patent Office communication the Examiner acknowledge receipt of the certified priority document, which was filed in the Patent Office on March 18, 2002, to perfect the priority claim under 35 USC 119. Attached are photocopies of the transmittal letter for the priority document, the first page of the priority document and the return receipt postcard evidencing receipt by the Patent Office on March 18, 2002.

CLAIMS

Claims 1, 3 and 4 are amended to correct typographical, grammatical and/or translation errors, and to place the claims in better form for consideration by the Examiner. No new matter is added and the amendments are not related to the patentability of the claims.

PRIOR ART REJECTIONS

In the Office Action claims 1-4 are rejected under 35 USC 103 as being unpatentable over USP 6,415,555 (Montague) in view of USP 6,145,628 (Tanaka).

The present claimed invention as defined by independent claim 1 is directed to a food and drink ordering system in an eating and drinking establishment which enables a customer to order any desired food or drink at the customer's table which is directly supplied to a food and drink supplying place (bar or kitchen). The food and drink ordering system includes image display means and order input means for inputting information on the food or drink ordered. Both the image display means and order input means are both provided at the customer's table. The food and drink ordering system also includes order display means, disposed in the food and drink supplying place, for displaying information on the content and location where the

order was placed, and a control unit having a menu display function of displaying information on food and drinks on the image display means at the customer's table and an information function of giving the information on the selected food and drink to the food and drink supplying place when the customer selects any item from the information on the available food and drinks displayed on the image display means by use of the order input means.

In rejecting claim 1, the Examiner relies upon the disclosures of Montague taken in combination with Tanaka. The Examiner admits at page 3 of the Office Action that Montague does not disclose that the food or drink video images are displayed on the image display means and that the customer orders food and drink from the customer's table. In order to bridge the gap between the present claimed invention as defined by claim 1 and Montague, the Examiner states:

> However, it is standard and well known in the art that the food and drink video images can be displayed on any given display including touchscreens, it is common in fast-food restaurants or a light food service places to display food or animated images on the screen (or touchscreen) to attract customer and make food selection easier.

This statement by the Examiner does not address the limitation in the claims that the image display means and order input means are both provided at the customer's table.

On page 3 of the Office Action the Examiner further states that Tanaka discloses "the designated input from the table by the customer can be recognized in the kitchen so the customer order can be delivered to the correct table (see column 1, lines 61-64)." Based on the Examiner's interpretation of Tanaka, the Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the food and drink ordering system of Montague to include the food and drink conveying system of Tanaka to provide customers with a convenient food and drink ordering system.

It appears that the Examiner has overstated what is taught by Tanaka.

Tanaka teaches a food and drink conveying system which enables a food or drink ordered, served to and conveyed through a conveying path to be received by the orderer, without any fear of the ordered food or drink being taken out of the conveying system by another person, and to provide notice to the orderer of the arrival of his/her order contained in a conveying container at a place near the orderer's table. Tanaka does not disclose, teach or suggest a customer viewing food and drink information on an

image display means and ordering their food and drink through order input means provided at the customer's table. Tanaka does not teach any type of customer ordering other than traditional ordering wherein a customer's order is provided to the service personnel of the establishment. Therefore, neither Montague nor Tanaka teach image display means and order input means for ordering food and drink provided at a customer's table as recited in claim 1.

Even if Montague and Tanaka are combined, the combination does not render claim 1 unpatentable. While Montague teaches a kiosk system there is no teaching or suggestion to include these kiosks at the customer's table. Nowhere in Montague or Tanaka is there a teaching or suggestion to provide individual ordering stations at each table for the customer's use.

As a result of the present invention a food and drink ordering system is provided which enables food to be ordered more quickly, the customer is advised of the status of the order, and since payment is made through the order input means with a credit or debit card, payment is guaranteed, occurs more quickly, and persons will complete their eating experience in a shorter period of time enabling more persons to visit the establishment.

Based strictly on hindsight which improperly takes into account the teachings set forth in Applicant's disclose, the

Examiner has artificially and with no specific support rejected claim 1 based on the combined teachings of Montague and Tanaka.

The question is whether the specific combination of references and the particular way of modifying the acknowledged prior art as proposed by the Examiner would have been obvious to one of ordinary skill in the art at the time the invention was made based upon the teachings thereof. As explained above, the answer must be that it would not have been obvious to one of ordinary skill in the art because the only way such a combination and modification could have been made is by improperly utilizing hindsight based on the present disclosure. It is well settled that

> To support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. Ex parte Clapp, 227 USPQ 972 (BPAI 1985).

Since the Examiner has not presented a convincing line of reasoning as to why an artisan would have found the claimed invention to have been obvious in light of the teachings of the references, the obviousness rejection cannot be maintained.

Even further, the Examiner is respectfully advised that not only do the cited references not teach the features of the

present claimed invention, there is no motivation to even combine the prior art references. The Examiner's only motivation for combining the references is that "one of ordinary skill in the art" would have recognized the possibility of modifying one prior art reference in view of the other. The Examiner is respectfully advised that the Federal Circuit has recently held that

> To prevent the use of hindsight based on the invention to defeat patentability of the invention, this Court requires the Examiner to show a motivation to combine the references that create the case of obviousness. In other words, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the same manner claimed. In re Rouffet, 47 USPQ2d 1453 (CAFC 1998).

In In re Rouffet as with the present application, the references were in the same field of endeavor as the invention. However, the CAFC still held that since a motivation to combine the references was absent (that is, "what specific understanding or technical principle...would have suggested the combination, for example, the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art), which is also lacking in the present application, a prima facie case of obviousness cannot be maintained without specifically stating the motivation to combine. See also, In re Dembiczak, 50 USPQ2d 1614 (CAFC 1999).

In view of the foregoing, claim 1 is patentable over Montague taken either alone or in combination with Tanaka under 35 USC 102 as well as 35 USC 103.

Claim 2, which is dependent on claim 1, recites the food and drink ordering system wherein a card reader for reading information recorded in a card having the function of making settlement of a charge for purchased goods and services is provided at the customer's table. While the Examiner appears to be correct in stating that Montague teaches that the kiosk can accept payment for the order from the customer, there is no disclosure, teaching or suggestion, and even further the Examiner provides no reasons in the Office Action, as to why it would have been obvious to one of ordinary skill in the art at the time the invention was made based upon the teachings of Montague to include separate card readers at each customer table.

In view the foregoing and in view of the dependence of claim 2 on claim 1, claim 2 is patentable over the cited references under 35 USC 102 as well as 35 USC 103.

Claims 3 and 4 are respectively dependent on claims 1 and 2. Claims 3 and 4 recite that the control unit includes an image control function of allowing an image displayed on the image display means to change in accordance with developments of the ordered food and drink which is being provided to the customer's

table via the carrying means in order to give the information on the arrival of the order to the customer's table.

In rejecting claims 3 and 4 the Examiner states that Tanaka further teaches a food and drink conveying system which enables a food or drink ordered, served to and conveyed through a conveying path to surely be received by the ordered customer, the food or drink order is being received from the kitchen or food and drink supplying place to the customer's table. This statement and the portions of Tanaka relied upon by the Examiner and set forth on page 4 of the Office Action do not address and do not at all relate to a system which provides an indication to the customer of when the customer's order will be received at the customer's table.

In view of the foregoing, claims 3 and 4 are patentable over the cited references under 35 USC 102 as well as 35 USC 103.

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Entry of this Amendment, allowance of the claims and the passing of this application to issue are respectfully solicited.

If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned at the telephone number given below for prompt action.

Respectfully submitted,

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March 8, 2002
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1. Submission of priority documents(1)

ART UNIT: 2673 FCM

Attorney Docket No.: 02001/LH

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first Class mail in an envelope addressed to: Assistant Commissioner for Trademarks Arlington, Va. 22202-3513, on the date noted below.

Leonard Holtz
Dated: March 8, 2002

Applicant : Kunihiko TANAKA

Serial Number : 10/053,631

Filed : 22 Jan 2002

Art Unit : 2673

SUBMISSION OF PRIORITY DOCUMENT(S)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Enclosed are Certified Copy(ies); priority is claimed under 35 USC 119:

Country	Application No.	Filing Date
JAPAN	2001-018056	January 26, 2001

Respectfully submitted,

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This is to certify that the annexed is a true copy of the following application as filed with this Office

出願年月日
Date of Application: ２００１年 １月２６日

出願番号
Application Number: 特願２００１－０１８０５６

[ST.10/C]: [ＪＰ２００１－０１８０５６]

出願人
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２００２年 １月１８日

特許庁長官
Commissioner,
Japan Patent Office 及川耕造

出証番号 出証特２００１－３１１７０８０